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TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1946

No. 58

GENERAL LELAND S. HOBBS, POST COMMANDING OFFICER, FORT DIX, NEW JERSEY, PETITIONER

vs.

UNITED STATES EX REL. HARRY HOROWITZ

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT.

PETITION FOR CERTIORARI FILED MARCH 18, 1946
CERTIORARI GRANTED MAY 27, 1946

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

No. —

GENERAL MADISON PEARSON, POST COMMANDING OFFICER, FORT DIX, NEW JERSEY, PETITIONER

vs.

UNITED STATES, EX REL. HARRY HOROWITZ

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

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1 In United States District Court, District of New Jersey

Civ. Ac. 5003

IN THE MATTER OF THE APPLICATION OF HARRY HOROWITZ FOR A WRIT OF HABEAS CORPUS

Docket entries

1945

Mar. 26—Petition for Writ of Habeas Corpus, filed.
Mar. 26—Hearing on application for Writ of Habeas Corpus. Ordered Writ of Habeas Corpus to issue, (M).
Mar. 26—Writ issued, with allocatur (M).
Mar. 31—Copy of Writ of Habeas Corpus, with Marshal's return, filed.
Apr. 16—Hearing on return Writ of Habeas Corpus. Motion that the return be stricken and the writ sustained—Denied. Exception allowed. (M).
Apr. 16—Ordered Writ dismissed. Exception allowed. (M).
Apr. 16—Return on Writ of Habeas Corpus, filed.
Apr. 16—Original Writ of Habeas Corpus with allocatur, returned and filed.
Apr. 16—Traverse, filed.
May 16—Order dismissing Writ of Habeas Corpus filed on May 14, 1945 (M).
May 29—Notice of Appeal, filed. (W. & W.)
May 31—Notices sent to Thorn Lord, Esq., and to Wm. P. Rowland, Clerk, U. S. C. C. A.
June 7—Findings of Fact and Conclusions of Law, filed (M) (Writ of Habeas Corpus, denied).
June 27—Consent Order extending time to file record on appeal to 7-30-45, filed (Fk) (Copy sent to U. S. C. C. A.).
July 25—Order directing Clerk to release exhibit to U. S. Attorney, filed (S).
July 28—Consent Order extending time to file record on appeal to August 27, 1945, filed (S).
Aug. 23—Designation of Contents of Record on Appeal filed.

2 In United States District Court

[Title omitted.]

Order extending time

Filed July 27, 1945

Upon the annexed stipulation of consent by all of the attorneys for all of the parties hereto, it is hereby

Ordered, that the time of the relator-appellant herein to serve and file his record on appeal be and the same hereby is extended to the 27th day of August 1945.

Dated: July 27th, 1945.

WILLIAM F. SMITH,
Judge, United States District Court.

3 The entry of the within order extending the time of the relator-appellant to serve and file Record on Appeal in the above case is hereby consented to.

Dated: July 23, 1945.

Willner & Willner,
WILLNER & WILLNER,
Attorney for Relator-Appellant.
THORN LORD,
United States Attorney,
Attorney for Respondent-Appellee.

4 In United States District Court

[Title omitted.]

Order extending time

Filed June 27, 1945

To the Honorable District Court of the United States for the District of New Jersey.

Upon the annexed stipulation and at the request of the attorneys for all of the parties hereto, it is hereby

Ordered, that the time of the relator-appellant herein to serve and file his record on appeal be and the same hereby is extended to the 30th day of July, 1945.

Dated: June 27, 1945.

GUY L. FAKE,
Judge, United States District Court.

5 The entry of the within order extending the time of the relator-appellant to serve and file Record on Appeal in the above case is hereby consented to.

Dated: June 27, 1945.

Willner & Willner,
WILLNER & WILLNER,
Attorney for Relator-Appellant.
THORN LORD,
United States Attorney,
Attorney for Respondent-Appellee.
By VINCENT E. HULL,
Ass't. U. S. Atty.

6 In United States District Court

[Title omitted.]

Order re withdrawal of service file

Filed July 25, 1945

It appearing that the Selective Service file of Harry Horowitz, which was originally in the custody of New York Local Board 104, is now in possession of the Clerk of this Court at Newark, having been offered in evidence and accepted at the hearing on the return of the Writ of Habeas Corpus heretofore issued in this matter, and that it is in the interest of all of the parties concerned that the said Clerk deliver said file to the United States Attorney, so that he may examine it and for that purpose may retain it in his custody as long as may be necessary.

It is on this 25th day of July

Ordered that the Clerk of this Court be and hereby is directed to deliver New York Local Board 104 Selective Service file of Harry Horowitz, which is presently in his possession as an exhibit in this matter, to the United States Attorney upon receiving a proper receipt therefor.

(S) WILLIAM F. SMITH,
Judge, United States District Court.

7 In the United States District Court

[Title omitted.]

Petition for writ of habeas corpus

Filed March 26, 1945

To the Honorable District Court of the United States for the District of New Jersey;

The petition of Harry Horowitz respectfully shows that he is a citizen of the United States and a resident of the State of New York.

First. That your petitioner is respectfully applying for a writ of habeas corpus to inquire into the detention of your petitioner's son, Martin Maury Horowitz, who is now unlawfully detained and restrained of his liberty and he alleges and shows as follows:

Second. That your petitioner's son, Martin Maury Horowitz, is not committed or detained of any process or mandate issued by any Court of the United States, or by any Judge thereof; nor is he committed or detained by virtue of the final judgment or decree

of a competent tribunal of civil or criminal jurisdiction, or the final order of such a tribunal made in a special proceeding instituted for any cause except to punish him for contempt; nor by virtue of an execution or other process issued upon a judgment, decree, or final order. The cause or pretense of the imprisonment or restraint, according to the best of the knowledge and belief of your petitioner, is that petitioner's son was inducted into the service allegedly pursuant to the Selective Service Act and is now stationed at the United States Army Base, at Fort Dix, New Jersey, since February 15, 1945.

Third. The Commanding Officer of said United States Army Base where petitioner's son is now stationed is General M.
8 Pierson, Post Commanding Officer, Fort Dix, New Jersey, and the said General Pierson is the person in whose custody petitioner's son is at present.

Fourth. That the aforesaid Army Base is located in the District of New Jersey.

Fifth. That the induction of Martin Maury Horowitz, petitioner's son, into the Armed Forces of the United States was the result of an arbitrary, capricious, and illegal act on the part of Local Board No. 104 of the Selective Service System located in the Borough of Bronx, County of Bronx, City and State of New York, and was contrary to the provisions of the Selective Training and Service Act of 1940 and the rules and regulations adopted and promulgated in connection therewith, and that the said petitioner's son was illegally and improperly inducted and is therefore improperly and illegally detained by the United States Army.

Sixth. That the facts leading up to such illegal detention are as follows:

1. Petitioner's son, Martin Maury Horowitz, is a student of the ministry, bona fide as such, in good faith, in continuous attendance at a duly recognized divinity institution, attending as such for the purpose of being ordained in the Ministry as an Orthodox Jewish Rabbi.

2. That said petitioner's son, Martin Maury Horowitz, is a bona fide theological student now attending the Rabbinical Seminary of America located at 135 South 9th Street, Borough of Brooklyn, County of Kings, City and State of New York.

3. That the aforesaid Seminary was founded over ten years ago. This Seminary has been duly recognized after due investigation by the Selective Service Headquarters as a duly constituted theological or divinity school, and has been recognized as such for more
9 than one year prior to the date of the enactment of the Selective Training and Service Act (September 16, 1940); and National Selective Service Headquarters had made a predetermination of the status of the said Seminary as such, and such

predetermination was included in the list maintained at City Selective Service Headquarters.

4. That by reason thereof, and pursuant to the evidence submitted by petitioner's said son, Martin Maury Horowitz, and by virtue of Section 5, subdivision (d), of the Selective Training and Service Act, and regulation 622.44, and Local Board Memorandum No. 187 issued October 14, 1943, and as amended May 13, 1944, adopted and promulgated in connection therewith, petitioner's son was and is entitled to be classified in class IV–D.

5. That petitioner's son is 25 years of age. He was born on September 15, 1919, in the Borough of Bronx, County of Bronx, City and State of New York, and now resides at 160 South 2d Avenue, Mount Vernon, New York.

6. That for a great many years, until the time of the induction of petitioner's said son, Martin Maury Horowitz, into the Army of the United States, he had always attended schools of Hebrew learning with the sole intention to qualify for the orthodox Hebrew rabbinate and to function as a Rabbi, and that his scholastic background and continued studies were all leading to the rabbinate ordainment.

7. That after having taken the entrance examination, the petitioner's said son, Martin Maury Horowitz, was, in May, 1941, accepted as a student preparing for the rabbinate at the Rabbinical Seminary of America, the school above referred to, for admission in September 1941, the next following term, and that since September 1941 the said Martin Maury Horowitz has been a student preparing for the orthodox rabbinate at the said Rabbinical Seminary of America.

8. That your petitioner's said son, Martin Maury Horowitz, duly registered with Local Board No. 104 in the Borough of Bronx, County of Bronx, City and State of New York.

9. That thereafter on October 2, 1941 the Local Board classified the said Martin Maury Horowitz in class IV–D as a student preparing for the rabbinate.

10. That on December 2, 1943 the said Local Board continued Martin Maury Horowitz in the same classification.

11. That on April 6, 1944, Local Board No. 104, at the request of New York City Selective Service Headquarters, forwarded the file of Martin Maury Horowitz to the said headquarters which in turn referred the case to a special panel on theological classification in Selective Service Headquarters for an advisory opinion. The Panel had a hearing and recommended that the petitioner's son, Martin Maury Horowitz, be not classified in IV–D.

12. Thereafter the said Martin M. Horowitz was reclassified by the Local Board in 1A and upon appearance before the Local

Board he called the attention of the said board to the fact that no rabbi had been present at his hearing before the alleged panel on theological classifications, although the said panel was described by City Selective Service Headquarters as composed of eminent clergymen and laymen.

13. That thereupon the Local Board referred the case for an advisory opinion to a local Rabbi in the County of Bronx who after the registrant's appearance before him recommended a IV-D classification.

14. That thereafter and on or about June 4, 1944 the said Martin Maury Horowitz was reinstated by his Local Board in IV-D classification.

11 15. That thereafter and upon instructions from New York City Selective Service Headquarters the Local Board reclassified the petitioner's son, Martin Maury Horowitz, in IA. Thereafter the Appeal Board sustained the classification in IA.

16. Thereafter petitioner's son made an application to City Selective Service Headquarters for a review and reopening of the case and was refused and denied by the City Selective Service Headquarters.

17. Thereafter petitioner's son, Martin Maury Horowitz, received notice of induction from his Local Board and in consequence thereof duly appeared at the induction center on February 15, 1944 and was inducted into the Army of the United States. He is now a member of the Armed Forces by reason of such induction.

18. Your petitioner respectfully alleges that upon the record in the case, upon the scholastic life history of the petitioner's said son, Martin Maury Horowitz, the registrant, to the present date, the said Martin Maury Horowitz has been an active and bona fide student of the divinity studying for the orthodox rabbinate in a recognized theological institution recognized as such by Selective Service authorities, and at no time abandoned or indicated any intention to abandon his studies for the rabbinate; that his case is such as was contemplated by Congress in the enactment of Section 5, subdivision (d) of the Selective Training and Service Act of 1940 with respect to exemption of students of the ministry in attendance at a recognized theological institution and therefore his classification in IA is an illegal, capricious and unwarranted act; that by virtue thereof his induction into the Armed Forces of the United States constitutes an unlawful detention and restraint of his liberty.

12 19. That your petitioner is making this petition at the request of and on behalf of petitioner's son Martin Maury Horowitz who may be removed from the jurisdiction of this Court before a petition can be signed by him personally.

20. Your petitioner respectfully prays that upon this application this Court require the production of the records, papers, affi-

davits and exhibits constituting the files and records of petitioner's son.

21. That no previous application has been made for the writ herein asked for.

Wherefore, your petitioner respectfully prays that a writ of Habeas Corpus issue herein directed to General M. Pierson, Post Commanding Officer, Fort Dix, New Jersey, for the purpose of inquiry into the case of the restraint and detention of Martin Maury Horowitz, petitioner's son, and delivering him therefrom forthwith pursuant to the statute in such case made and provided.

Dated: New York, February 19, 1945.

(S) HARRY HOROWITZ,
Petitioner.

13 [*Duly sworn to by Harry Horowitz; jurat omitted in printing.*]

14 In United States District Court

Writ of habeas corpus

Filed March 31, 1945

THE PRESIDENT OF THE UNITED STATES

To GENERAL M. PIERSON, *Post Commanding Officer at Fort Dix, New Jersey, greetings:*

You are hereby commanded, that the body of Martin Maury Horowitz by you restrained of his liberty, as it is said in the petition of Harry Horowitz dated the 16th day of February 1945, detained by whatsoever names the said Martin Maury Horowitz may be detained, together with the day and cause of being taken and detained, you have before the Honorable Thomas F. Meaney, Judge of the United States District Court in and for the District of New Jersey, at the Courthouse, Room #1 of said Court, in the City of Newark, New Jersey, at 10:00 o'clock A. M., on the 16th day of April 1945, then and there to do, submit to and receive whatsoever the said Judge shall then and there consider in that behalf; and have you then and there this writ.

Witness the Honorable Thomas F. Meaney, United States District Judge at Newark, N. J., this 26th day of March A. D. 1945.

WILLIAM H. TALLYN,
Clerk.

Per VERA ALEXANDER
Deputy.

Let the Writ of Habeas Corpus Issue.

THOMAS F. MEANEY,
Judge, U. S. Dist. Court.

Served the within Habeas Corpus, on General M. Pierson, Post Commanding officer, by delivering to and leaving with Lt. Col. John T. Daly, JAGD. the original and a copy thereof at Ft. Dix, in the District of New Jersey, on the 28th day of March 1945, at 3:30 P. M., the same time informing said person of its contents.

HUBERT J. HARRINGTON,
United States Marshal.
By ALLEN S. SMITH,
Deputy.

15 In United States District Court

[Title omitted.]

Return on writ of habeas corpus

Filed April 16, 1945

To the Honorable THOMAS F. MEANEY, *Judge of the United States District Court for the District of New Jersey:*

The respondent, Brigadier General Madison Pearson, Commanding General, Fort Dix, New Jersey, upon whom has been served a writ of habeas corpus for the production of Martin Maury Horowitz, respectfully makes return and states that he holds the said Martin Maury Horowitz by authority of the United States as a soldier in the Army of the United States, the said Martin Maury Horowitz having been duly and regularly inducted therein on or about February 15, 1945, under the provisions of the Selective Service Training Act of 1940 and amendments thereto.

Obedient, however, to the mandate of said writ, the respondent herewith produces before the Court the body of said Martin Maury Horowitz and prays this Honorable Court to dismiss said writ.

(S) Madison Pearson,
MADISON PEARSON,
Brigadier General, U. S. A.,
Commanding Fort Dix, N. J.

16 In the United States District Court

[Title omitted.]

Traverse

Filed April 16, 1945

To the Honorable District Court of the United States for the District of New Jersey.

Harry Horowitz, the relator herein, by this his traverse and

answer to the return of General M. Pierson, respondent to the Writ of Habeas Corpus herein, respectfully alleges and shows as follows, to wit:

First. Relator denies all allegations of fact and matters set forth in said return.

Second. And, further traversing and answering said return, the relator alleges that the facts set forth in said return do not legally warrant such restraint.

Third. And, further traversing and answering said return, the relator alleges that the facts set forth in said return do not legally warrant such restraint by reason of other facts not stated therein.

Fourth. And, further traversing and answering said return, the relator states that said return does not show legal warrant or authority for the detention of the relator.

Fifth. And, further traversing and answering said return, the relator reiterates all facts stated in the Petition filed herein in his behalf as reasons why such detention is without warrant of law.

17 Wherefore, the premises considered, Harry Horowitz, the relator herein, prays that the said Writ of Habeas Corpus be sustained and that he be delivered from the imprisonment and restraint of said respondent, as prayed for in the Petition for said Writ, and for his discharge from the custody, restraint, imprisonment and detention of his liberty, as hereinabove set forth, and for such other, further and different relief as to the Court may seem just and proper.

Dated: New York, April 16, 1945.

(S) HARRY HOROWITZ,
Relator.

18 [*Duly sworn to by Harry Horowitz; jurat omitted in printing.*]

19 In United States District Court District of New Jersey

Civil 5003

HARRY HOROWITZ, RELATOR

vs.

GENERAL M. PIERSON, POST COMMANDING OFFICER, FORT DIX, N. J., RESPONDENT

Appearances

For the Relator: Messrs. Willner & Willner, Meyer Kreeger, Esq. For the Respondent: Charles A. Stanziale, Esq. Assistant United States Attorney.

Hearing on return of Writ of Habeas Corpus.

Before Hon. THOMAS F. MEANEY, Judge, at the Federal Building, Newark, New Jersey, on Monday, April 16, 1945.

20 Mr. STANZIALE. Your Honor please, for the record I have filed with the Clerk the original to the return of the writ of habeas corpus and have given a copy to counsel for the defense.

Mr. WILLNER. If your Honor please, I would like to file with the Clerk at this time a traverse. I ask your Honor's permission to introduce Mr. Meyer Kreeger of the New York Bar and to ask permission for him to try the case.

The COURT. Very well. So ordered.

Mr. KREEGER. May it please your Honor, this is a writ of habeas corpus taken out under Section 5, Subdivision D of the Selective Service and Training Act of 1940 covering exemptions to ministers and students preparing for the ministry. The relator's case will consist of the testimony of two witnesses, and relator's son, on whose behalf this writ was obtained, and the testimony of Rabbi Henry A. Schorr, a leading rabbi of New York City, who was designated by the Local Board, I believe in May 1944, to pass upon the case and advise the Local Board accordingly.

Motion to sustain writ

At the outset I should like to make a motion for the record based on the fact that the return filed by the Government does not
21 in any way deny any of the allegations of fact set out in the petition, and since the return filed constitutes an answer to the Government, it is tantamount to an admission of the statements of fact, and under those circumstances there is no question of fact before the Court, and I therefore move that the return be ordered stricken and that the writ be sustained on the basis that there is no issue raised by the petition and the return.

The COURT. Mr. Stanziale, what have you to say to that? It seems to me there is a complete denial in the assertion that he was duly and regularly inducted under the provisions of the Selective Training and Service Act.

Mr. KREEGER. That is a denial of a conclusion of law as to whether or not he was regularly inducted.

The COURT. I shall take it as a complete denial of the facts alleged and deny your motion. You may have an exception.

(Which exception is hereby allowed and sealed accordingly.) (Sealed.)

Mr. KREEGER. I should briefly like to state some of the facts before I put the first witness on the stand. I think it may save time, with your Honor's permission. The relator's son
22 registered in the early part of 1941 under the Selective Service Law.

The COURT. Now, are you going to give me any information that is not contained in the petition, because I have the petition and I have read it and familiarized myself with the facts?

Mr. KREEGER. Yes; I think some of the facts that I am going to give to your Honor are not contained in the petition.

The COURT. All right.

Mr. KREEGER. And when returning the questionnaire to the Local Board, he took the matter up with the clerk of the Local Board, after stating the facts to him, and was advised by the clerk of the Local Board to fill in a request for a 4–D classification. At that time the registrant was preparing for admission to a seminary and was not yet accepted for admission.

As a result—and this does not appear in the petition—the question there which now contains the name of the seminary that he had been attending since later in 1941, did not have that name at that time. I am saying that now, your Honor, because otherwise when your Honor looks at the exhibit it might be confusing.

23 In January 1941, when the questionnaire was handed in, that allegation was not in there. As a matter of fact, that allegation in the questionnaire was never written in by the registrant himself, but was written in subsequently when a letter was filed by the registrant that he is now attending such and such a seminary. Somebody at the Local Board wrote in the name of the seminary in the appropriate place. Some time later when a question arose as to this man's proper classification, he appeared before the Local Board and upon their raising the point that he was not yet a student of the seminary, he called their attention to a case that had been disposed of in Connecticut of a divinity student, I believe in Yale—this does not appear in the petition and that is why I cannot call your Honor's attention to it—and the Local Board then told him, "If in that case, which you say is similar to yours, even though the man was not attending the seminary, if the Local Board classified him as 4–D, we will do the same in yours." He obtained the evidence in written form of the case in Connecticut, but the Local Board refused to follow that case and refused to classify him in 4–D.

24 The COURT. Well, I thought they did classify him in 4–D.

Mr. KREEGER. Yes; they did eventually, your Honor, and these are the facts. They do not appear in the petition, it will take but a few minutes, and I think it will really be confusing otherwise, to give you the background.

The COURT. All right.

Mr. KREEGER. Subsequently, shortly thereafter, when the Local Board said they didn't know whether they should classify him 4–D or not—because if I may remind your Honor, the entire question of admission to seminaries in the early part of 1941, was still

a question that was not yet finally determined—the registrant himself took his papers down to Washington and submitted them to National Headquarters to a Major Davidson, the same papers that had been submitted to the Local Board, and Major Davidson told him, "There is no question that you are entitled to a 4–D on these papers, on the basis of the facts. Go back home and I will advise City Headquarters." And City Headquarters evidently was advised by National Headquarters that the man belonged in 4–D, and I am referring to 1941; as a result of which the Chief of the Legal Division at the City Headquarters wrote a letter to this
25 Local Board stating, in effect, "We have been advised by National Headquarters that such and such is the case; we now advise you that this man belongs in 4–D on the basis of the fact that he is attending a recognized seminary and so forth." I may say there will be no question of the recognition of the school. That has never been raised in this case or any other case.

Immediately after the registrant received a 4–D from the Local Board and that 4–D was renewed in December 1943 on the Local Board's own motion——

The COURT. He got the first classification in October 1940; is that right?

Mr. KREEGER. Correct. In December 1943, that was renewed by the Local Board on its own examination according to the card that they sent the registrant. I will give you that date, Mr. Stanziale. Mr. Stanziale asked for the exact date. That was December 4, 1943, when it was continued.

The COURT. December 2nd it is set forth here.

Mr. KREEGER. Yes; that was 1941.

The COURT. No; December 2nd, 1943, defendant continued the same classification.

Mr. KREEGER. Yes; we received the card December 4, 1943. Thereafter, your Honor, and this next fact does not appear
26 in the petition, the Local Board did not ask for any review of this case by headquarters or by anybody; headquarters wrote a letter to the Local Board asking the Local Board to send this file for review, and thereafter the man appeared before a panel at the request of City Headquarters, a panel consisting of three laymen. There was not a single rabbi present; they voted against the registrant, and thereupon the headquarters wrote back to the Local Board stating the fact that the panel had voted against him and saying, "We are sending it back to you for reconsideration," or some such thing. In reliance upon that letter from headquarters, the Local Board wrote to headquarters saying, "In reliance upon your letter saying that we are to reconsider this case, we are forwarding or have forwarded this case to a local rabbi, Henry A. Schorr." The file and the man were sent to Rabbi Schorr. A

written report was brought in by Rabbi Schorr to the Local Board or sent in, I don't know which, and the rabbi stated that the registrant unquestionably was a bona fide rabbinical student preparing for the rabbinate, and thereupon the Local Board advised headquarters of this report and that they were accordingly sending the man a 4–D classification or restoring him to 4–D classification.

27 In that connection, your Honor, it appeared that this registrant had, as long ago as 1936, indicated in writing in numerous places, three years before the World War in Europe, five years before Selective Service and five or six years before Pearl Harbor, that his choice of profession was the rabbinate; and we will show your Honor—we have here even an album of public school, going back to 1932 or '33, in which the man put down as his choice of profession "rabbi," as long as 12 years ago. The evidence submitted, and this I believe does not appear in the petition but will be proved upon the hearing, showing his original intent to become a rabbi in written form, your Honor, was, first of all, the graduation book from the DeWitt Clinton High School in 1936, in which, as your Honor is undoubtedly aware, every graduate is asked, "What do you intend to make your profession?" and he puts in the answer and it is printed in a book, and he put down, "The rabbinate." In 1936 upon entering the College of the City of New York for secular education——

The Court. Well, you are arguing now, you are giving testimony. Let's get down to the facts, the factual situation.

28 Mr. Kreeger. Very well, your Honor. A number of these factual pieces of evidence were before the Local Board when Rabbi Schorr turned in his report. On the basis of this they gave him a 4–D. Within less than 60 days——

The Court. When was he first classed as 1–A?

Mr. Stanziale. First classed 1–D, your Honor.

The Court. No. When was he first classed as 1–A?

Mr. Kreeger. That was in May, your Honor. I haven't the Local Board file, it was in May of 1944, after receiving the report from headquarters.

The Court. May 1944?

Mr. Kreeger. May 1944.

The Court. On June 4, 1944, he was reinstated as 4–D?

Mr. Kreeger. 4–D and that continued for less than 60 days.

The Court. When was he reclassified as 1–A finally?

Mr. Kreeger. The end of August 1944. Again I must ask Mr. Stanziale if he has the record.

Mr. Stanziale. Yes; I have the whole file here, Judge Meaney.

The Court. Well, let me have the date.

29 Mr. Stanziale. Yes, your Honor; I am trying to get

the dates of these, Judge Meaney. Shall I give you all the classifications?

The COURT. Here is what I have so far; October 2, 1941, 4–D; December 2, 1943, renewed as 4–D; May 1944, classified as 1–A.

Mr. STANZIALE. That's right, sir.

The COURT. June 4, 1944, reinstated in 4–D.

Mr. STANZIALE. June 4, did you say? June 1st.

The COURT. June 1st?

Mr. STANZIALE. Yes.

The COURT. What date was it in May that he was classified as 1–A.

Mr. STANZIALE. May the 11th, 1–A.

The COURT. Now, then, in August 1944?

Mr. STANZIALE. August 10th.

The COURT. August 10th he was again classified?——

Mr. STANZIALE. 1–A.

The COURT. As 1–A?

Mr. STANZIALE. Yes.

The COURT. All right; and continued——

30 Mr. KREEGER. Thereafter an appeal was taken to the Board of Appeals and the classification was affirmed by the Board of Appeals and after that in Spite of application to the City Headquarters and to National Headquarters, the 1–A classification was continued, resulting in the man's induction.

Mr. STANZIALE. Have you anything further, Mr. Kreeger, to say?

Mr. KREEGER. No.

Mr. STANZIALE. Judge Meaney, so that we may proceed with the matter orderly, I think, for the purpose of the record and before the counsel for the applicant on the writ of habeas corpus proceeds with his case, I think he will want to refer to different parts of the record; I offer it as a Government exhibit at this particular time; the entire record.

The COURT. Available——

Mr. STANZIALE. Available to counsel for the defendant; the entire file of the defendant.

Mr. KREEGER. I have one objection to the file, your Honor, I object to the file so much of the file as has to do with the so-called panel and their report, as not being binding upon the registrant, since the panel is, first of all, not organized pursuant to any provision or enactment of law anywheres or regulation of Selective Service, as was admitted.

31 The COURT. Is there any regulation which authorizes a rabbi to give his opinion?

Mr. KREEGER. Yes; the Local Board may call upon anybody for advice under regulations.

The COURT. Then they may call upon a panel too.

Mr. KREEGER. The Local Board did not call in this case.

The COURT. It may accept the findings of panels if it desires.

Mr. STANZIALE. If it so desires, that is my understanding.

The COURT. I shall allow the whole record, and we will recess now until 2 o'clock.

(Received and marked "Exhibit G-1.")

AFTERNOON SESSION

Mr. KREEGER. With the Court's approval I should like to put on as the first witness Rabbi Schorr, in order to permit him to go back to his parochial business.

The COURT. Very well.

HENRY A. SCHORR, called and sworn on behalf of the relator, testified as follows:

Direct examination by Mr. KREEGER:

32 Mr. KREEGER. May I have the Local Board file?

Mr. STANZIALE. Surely. It is in evidence Mr. Kreeger.

Q. Rabbi Schorr, how long have you been ordained as a rabbi?—A. Since, June 1926.

Q. And are you a graduate of any theological school?—A. Yes.

Q. Which one?—A. Jewish Institute of Religion.

Q. And since 1926 have you been the rabbi in any Jewish communities?—A. Yes.

Q. Which ones?—A. Rabbi of Temple Teneal, better known as Unity Synagogue, from 1926 to 1930; since 1930, Rabbi for Temple Adath Israel, Grand Concourse and 169th Street, Bronx.

Q. Are you affiliated with any other institutions?—A. I have been Chaplain of Bellevue Hospital since 1926.

Q. Are you active in any other religious and secular movements in connection with the community?—A. Yes.

Q. And if so, which ones?—A. I served as President of the Bronx Council of Rabbis. I served as President of the Alumni Association of the Jewish Institute of Religion.

The COURT. I don't think there is any question about the rabbi's situation or the fact that he is a regularly ordained and accepted rabbi.

33 Mr. KREEGER. There is this much, Your Honor, if I may be permitted to say it, it will come out later in the course of the hearing that there is a letter here from headquarters giving the qualifications in full of three men who sat on the panel, and I think in all fairness to the registrant, since Rabbi Schorr recommended the 4-D, we should have Rabbi Schorr's qualifications, his position in the community as well, if it meets with your Honor's approval.

The COURT. Well, I am satisfied that the rabbi is possessed of all of the faculties pertaining to his rabbinate and that he is the product of a regularly accepted theological school and that he has been functioning since 1926.

The WITNESS. Yes.

The COURT. And you have been actively engaged only in the rabbinate?

The WITNESS. Right.

The COURT. I think insofar as we might speak of his qualification that they would be admitted.

Q. Now, Rabbi Schorr, in May 1944, did you receive any communication from Local Board No. 104?—A. Yes.

Q. And was that an oral or written communication?—A. To the best of my recollection, I think it was a telephone call.

34 Q. And who was the telephone call from?—A. From the chairman of the Local Board.

Q. And can you tell us what the substance of the conversation was?

Mr. STANZIALE. I object. I would like to have the name of the person who called him.

The COURT. Well, you were asked to go to the board, were you?

The WITNESS. No; I was asked for an appointment and the chairman said he would come to me.

The COURT. Then did you see the chairman?

The WITNESS. Yes, your Honor.

Q. Did the chairman ask you to do anything?—A. He brought with him a voluminous file with regard to a registrant by the name of Horowitz.

Q. And might I ask you incidentally, Rabbi Schorr, have you been connected in any capacity with Selective Service?—A. I had served as chairman of a Local Board in the Bronx.

Q. For how long a time about?—A. To the best of my recollection, about a year until I took ill.

Q. Did you undertake to review the file for the Local Board?—A. I did.

The COURT. Let me ask you. Did you appear before the board at any time in session?

35 The WITNESS. No, your honor.

The COURT. I am not going to hear anything that he may have told to any individual.

Mr. KREEGER. No; I am not going to ——

The COURT. Anything he did in his capacity of adviser to the chairman of the board sitting in session ——

Mr. KREEGER. I am not going to ask anything as to his conversation. I am aware of your Honor's objection to that.

Q. Was the file left with you by the chairman of the board?—A. It was.

Q. After the chairman's conversation with you di' Martin Horowitz appear before you?—A. He did.

Q. And di' you hold any conversation with him?—A. I did.

Q. And after the conversation and the examination of the file did you write a letter to the Local Board?—A. I did.

Q. And did you return the file to the Local Board?—A. I did.

Mr. KREEGER. Will it be conceded that this is a letter that was written?

MR. STANZIALE. It is a part of the file, Mr. Kreeger.

36 Q. And did you afterwards receive a letter from the Local Board?—A. I did.

Q. And did the letter thank you for your services?—A. It did.

Q. Did you recommend a 4-D classification of Martin Horowitz?—A. I did.

Q. Rabbi Schorr, I call your attention to a letter taken out of the Local Board file dated February 12, 1945, from New York City Headquarters to Local Board 104, which was the registrant's Local Board, and more particularly to the names of three gentlemen contained therein, Jonah J. Goldstein, William S. Evans, and E. Ivan Rubenstein, and ask you to look at the description of the three gentlemen in that letter. Now, Rabbi Schorr, have you any knowledge of Judge Jonah Goldstein?

Mr. STANZIALE. I object.

The COURT. What is the purpose of the question whether he has any knowledge of him or not?

MR. KREEGER. To prove that while he is a Judge of General Sessions, he is not a religious representative of the Jewish community New York City.

Mr. STANZIALE. I object, if your Honor please.

The COURT. You mean he is not a rabbi?

MR. KREEGER. No, no; he is not a religious representative.

37 I call your attention to the fact that Memorandum No. 94 from New York City Headquarters, the only one referring to the panel, specifically says an advisory panel of outstanding religious representatives.

The COURT. Well, what does that mean, what does "religious representative" mean? Am I to take his definition of that or yours, or am I to accept my own? Is there any further definition given in that memorandum?

Mr. KREEGER. That's all, your Honor. I am offering Rabbi Schorr as a qualified witness to testify as to whether these gentlemen in the community of which he has been a rabbi for 19 years are known as religious representative or layment.

The COURT. I don't think there is any such distinction; I don't think that is the question at all and I frankly don't care what the rabbi thinks about that. I don't think it is material—only for that reason.

The WITNESS. I understand, your Honor.

Mr. KREEGER. Of course, your Honor, what I am trying to prove is——

The COURT. Well, we will take judicial notice of the fact that neither Judge Goldstein nor Judge Evans nor Judge
38 Rubenstein is a rabbi or a member of any ordained portion of the religion.

Mr. KREEGER. Well, it goes further, your Honor. The words "religious representative" goes further than that in that it must be a man who has been active in a religious way.

The COURT. Well, don't you think that being president of the Federation of Jewish Charities and member of the Board of Directors of the Jewish Education Committee and a member of B'nai Brith; a member of the Federation for Support of Jewish Philanthropic Societies; member of the Jewish Education Committee; member of the United Synagogue of America; past president and member of the Board of Trustees of Temple Beth El and member of the Continuing Conference of the Jewish Theological Seminary of America might have a bearing on the fact of whether or not they are religious representatives within the purview of that memorandum which is not a binding direction?

Mr. KREEGER. It might, your Honor, it might not; depending upon each particular case.

The COURT. Not depending upon what the rabbi testifies; I shall accept the description given in this letter of February 12th of the Selective Service as descriptive of the religious affiliations
39 and activities of the three members. There is nothing in there that isn't so, is there?

The WITNESS. Not to my knowledge.

Mr. KREEGER. May I have an exception to that ruling, your Honor?

The COURT. To what ruling? That I didn't care what he thought about it?

Mr. KREEGER. No; that you denied my right to ask him that line of questions.

The COURT. You may have an exception, I don't think it is material.

(Which exception is hereby allowed and sealed accordingly.) (Sealed.)

Q. Rabbi Schorr, what was your basis for recommending a 4-D classification in the case of Martin Horowitz?—A. My sincere belief that he had prepared himself for the profession of the rabbinate for many years.

Q. Would you like to see your letter of May 31, 1944?—A. If there is no objection I would.

The COURT. Give us your own recollection; tell us what you did.

The WITNESS. After the examination of the file and an interview with the registrant, it seemed to me quite clear that this
40 man was a bona fide divinity student and was thinking of the rabbinate as a life calling and not in order to evade any service in the Government.

The COURT. How far had he gone, at the time you conferred with him, in the course which led exclusively to the rabbinate?

The WITNESS. To my best recollection, several years; I don't recall.

The COURT. Where had he gone?

The WITNESS. To the American Rabbinical Seminary of America, better known as the Chafetz Chayim.

Q. I show you letter, May 31, 1944, and ask you if that will refresh your recollection as to any further grounds you had at that time for recommending a 4-D?

The COURT. Is that the letter you sent to the board?

The WITNESS. Yes.

The COURT. Did you have any other communication to the board with reference to this young man?

The WITNESS. None written.

The COURT. Any formal appearance before the board?

The WITNESS. No, your Honor.

Q. Now, Rabbi Schorr, are you connected with the Jewish Education Committee?—A. I am.

Q. Is that a Jewish religious body?

41 Mr. STANZIALE. I object, if your Honor please; it is immaterial whether he is acquainted with it or whether the Jewish Education Committee is a religious body; it has nothing to do with the gravamen of this case. I think what we should restrict ourselves to is the basis upon which the rabbi entered his opinion.

The COURT. That is set forth in his letter.

Mr. STANZIALE. That is set forth in his letter. I think this is all collateral.

Mr. KREEGER. The rabbi is also here as a witness, your Honor. As long as he is here I am using him as an expert in connection with some of the things that appear in the file as having come from headquarters under a guise of Jewish authority. I intend to show by him——

The COURT. You are starting out with the implied premise that unless there is a rabbi on this panel that the panel is not qualified to pass upon the status of the registrant. I don't think I accept that as a premise.

Mr. KREEGER. I know your Honor doesn't accept it, because your Honor has so indicated before. I am trying to proceed to show that these so-called qualifications which Selective Service
42 Headquarters deemed itself bound to show in order to give

some color of authority for these people who are on the panel, are not as a matter of fact in most instances religious organizations at all, having nothing to do with religion.

The COURT. Suppose they are not?

Mr. KREEGER. Well, these men, your Honor, under the only memo that created the panel, are not the religious representatives—at least not a religious body, and the language of the memorandum is very specific in that.

The COURT. I don't know that the fact that they are not rabbis prevents them from having a faculty of religious representative. For instance, I think I may pretty well announce myself as a representative of the Catholic religion; the mere fact that I am not a deacon or subdeacon or priest or any of the hierarchy would not prevent me from being a religious representative of my faith; I mean, I am si'ply arguing analogically.

Mr. KREEGER. The analogy stops at a certain point, because there is a difference in the organization of the two faiths. Whereas one who is a member of your faith, your Honor, is affiliated with the Church, and there is only one organization
43 for the Church, we have separate communities in our faith, and if a man is not affiliated with some community or other, he is just not affiliated in a religious way.

The COURT. Well, he is a religious representative of the Jewish faith, isn't he?

Mr. KREEGER. Well, the Selective Service Headquarters cannot say that merely because a man is a Judge of the Court of General Sessions and happens to have been born a Jew he is a religious representative of the Jewish faith.

The COURT. No; but the board may call in those people who they think are representative Jews and ask them their opinion in an advisory capacity and use that in arriving at a determination.

Mr. KREEGER. Is your Honor referring to the Local Board?

The COURT. Yes.

Mr. KREEGER. The Local Board didn't even have——

The COURT. Well, get to that then. I am her' to hear evidence, I am not here to have you make speeches or give testimony.

Mr. KREEGER. No; I don't want to give testimony.

The COURT. Then let's get down to the meat of it and find
44 out what did happen. Now, do you want anything further from the rabbi?

Mr. KREEGER. Yes; I should like to ask questions about these organizations.

The COURT. I don't care to hear it.

Mr. KREEGER. Exception.

The COURT. You may have an exception.

(Which exception is hereby allowed and sealed accordingly.)
(Sealed.)

The Court. Do you know whether or not these men are representative Jews, speaking from a religious standpoint, nor from a folk standpoint? Do you know that they are not professing religious Jews, Jonah Goldstein or Judge Evans or Judge Rubenstein? Would you say that it is your mature and considered opinion that they are not practicing members of the Jewish religion?

The Witness. I couldn't possibly say that.

Mr. Kreeger. Your witness.

Mr. Stanziale. No questions.

Martin M. Horowitz, called and sworn on behalf of the relator, testified as follows:

Direct examination by Mr. Kreeger:

Q. What is your father's name?—A. My father's name
45 is Harry Horowitz.

Q. And is he the relator who signed the petition in this case?—A. Yes, he is.

Q. Where were you born?—A. I was born in New York City.

Q. Did you attend public school?—A. Yes, I did.

Q. What public school?—A. I attended Public Schools 41, 56, and 83.

Q. From which one were you graduated?—A. 83.

Q. I show you this little album and ask you whether it is your public school graduation album?—A. It is.

Q. And is the page at which I have it open in your handwriting?—A. It is, sir.

Q. When did you graduate from Public School 83?—A. In June 1932.

Q. And when was this page written that I am showing to you?—A. About the same time.

Q. And I call your attention more particularly to the word "Rabbi" next to the printed word "Profession." Will you tell me who wrote that word?—A. I did, sir.

Q. When did you write it?—A. I wrote it some time in June 1932.

Mr. Kreeger. I offer this page in evidence, Mr. Stanziale.

Mr. Stanziale. I have no objection, Judge Meaney.

46 (Received and marked "Relator's Exhibit 1.")

Q. Did you go to high school, Mr. Horowitz?—A. Yes, sir.

Q. What high school?—A. De Witt Clinton.

Q. Did you graduate?—A. I was graduated from De Witt Clinton High School in June 1936.

Q. And is this "The Clintonian" your graduation book for June 1936?—A. It is.

Q. Is this your book and your name appearing on the lower column, left column of the right page [indicating]?—A. Yes, it is.

Q. And how long have you had this book?—A. Since I was graduated, in June 1936.

Mr. KREEGER. May I offer it in evidence?

The COURT. Any objection? Offer it in evidence.

(Received and marked "Relator's Exhibit 2.")

Mr. KREEGER. May the record indicate that exhibit marked "Relator's 2" contains the following memorandum, referring to Martin Horowitz: "Horowitz, Martin M." "Martin" C. C. N. Y. Beneath that in light type, "Chorus, Hebrew Society Mathematics Club." Beneath that in heavier type, "The Rabinate" and the legend, "Still waters run deep."

47 Q. Do the letters "C. C. N. Y." represent the fact that you were applying for admission to the College of the City of New York?—A. Yes, sir.

Q. And what does the word chorus mean?—A. It means that I sang in the school chorus.

Q. What does the word Hebrew Society mean?

The COURT. Those were societies in the school, weren't they?

The WITNESS. Yes, sir.

The COURT. Hebrew Society?

The WITNESS. Yes, sir.

Q. When the book was being made up did you notify the editor that your choice of profession was the rabbinate?—A. I did, sir.

The COURT. Did you go to C. C. N. Y.?

The WITNESS. I did, sir.

Q. I show you a general organization certificate of De Witt Clinton High School and ask you what that represents?—A. It means that I had given service to the Hebrew Club at the High School.

The COURT. For what year?

The WITNESS. That was January 1936.

Mr. KREEGER. I offer that in evidence.

Mr. STANZIALE. I object to that.

The COURT. Hebrew Club?

The WITNESS. Yes.

48 Mr. STANIZALE. I object to that. They have in the High School the French Club, the German Club—it doesn't mean anything.

The COURT. I will allow it.

Q. And similarly for the year 1935?—A. Same thing.

The COURT. Did you study Hebrew there?

The WITNESS. No; we have what is called Jewish Culture Society.

Mr. KREEGER. We offer it in evidence.

(Received and marked "Relator's Exhibit 3.")

Q. Did you enter City College in September 1936?—A. I did, sir.

Q. And did you answer a questionnaire concerning your interest in the various professions possible?—A. I did; I answered the questionnaire that my first choice of profession was the rabbinate.

Q. And your second?—A. The second was teaching.

Q. And your third?—A. I believe was lawyer or C. P. A.

Q. Did you make out a similar or answer a similar questionnaire in 1937, when you continued at City College?—A. I did.

Q. And how did your questionnaire run then?—A. I had number 1, teacher; number 2, rabbi and 3, I believe, was lawyer.

Q. Now, going back for a moment to your years at
49 high school——

The COURT. Well, let's go ahead instead of going back. Let's get down to the examination before the board. I am satisfied that you have indicated a course on his part which tended towards studying for the rabbinate. Now, let's come down to the question of what happened before the board, which after all is the thing we are concerned with, whether the board acted without proper basis in taking the action which it took, whether it acted arbitrarily and capriciously.

Mr. KREEGER. I merely want to show the other activities in the religious field.

The COURT. But you see, what we are concerned with is what happened before the board. I wanted to be a priest until I was seven, I had a violent desire to be a cardinal, but I changed my mind. What we want is the situation before the board; what they had before them on which they acted which constituted arbitrary and capricious action.

Mr. KREEGER. These are the very things, your Honor.

The COURT. I am not concerned with these. I want to find out what the board had before them. Let's take the record.

50 Mr. STANZIALE. May I suggest that we look at the questionnaire first?

The COURT. Let's take the record and the actions that the board took, which you say were capricious and arbitrary.

Mr. KREEGER. May I lead him up to that point quickly, your Honor, just to cover the intervening years?

The COURT. Well, did you graduate from C. C. N. Y.?

The WITNESS. No.

The COURT. How far did you go?

The WITNESS. I have about 100 credits.

The COURT. How far did you go?

The WITNESS. Up to the senior year.

The COURT. Up to what year?
The WITNESS. I completed three years.
The COURT. Nineteen what?
The WITNESS. I stopped attending there; I stopped in 1943.
The COURT. 1943?
The WITNESS. Yes, sir.
The COURT. When did you go there?
The WITNESS. In the beginning I went in the daytime.
51 The COURT. When did you first start there?
The WITNESS. 1936.
The COURT. And how long did you go regularly?
The WITNESS. Oh, I went until 1941.
The COURT. Five years?
The WITNESS. Yes, sir.
The COURT. What part of 1941?
The WITNESS. Until July of 1941.
The COURT. July 1941. Were you a full-time student in all that time?
The WITNESS. No; I never was a full-time student in the sense that I carried a full program.
The COURT. Did you do anything else while you were going to C. C. N. Y.?
The WITNESS. Well, I attended courses at Jewish Theological Seminary.
The COURT. Did you do anything else—did you work?
The WITNESS. I never worked.
The COURT. Did you take your course at C. C. N. Y.
The WITNESS. Yes, sir.
The COURT. And at the same time——
The WITNESS. At the same time I was taking preparatory for entrance into a rabbinical seminary.
52 The COURT. Until when?
The WITNESS. Until 1941, that is, well, until I was actually in the seminary itself.
The COURT. When did you go into the seminary?
The WITNESS. September 1941.
MR. KREEGER. May I proceed?
The COURT. Yes.

By Mr. KREEGER:

Q. After you entered the seminary in September 1941, did you continue there in regular attendance?—A. I did, sir.

Q. And you were still enrolled as a student there down to the date of your induction?—A. Yes, sir.

Q. Between 1939 and 1941 did you take any special preparatory courses for this particular seminary?—A. Yes, sir; I was studying

privately with a certain Rabbi Levine in preparation for entrance into the Rabbinical Seminary of America.

Q. And that is the seminary which you eventually entered?—A. Yes, sir.

Q. Was Rabbi Levine in any way affiliated with the seminary?—A. He was one of the founders of this seminary.

Q. Coming down to the date when you registered for Selective Service, do you recall when that was?—A. That was some time in January 1941.

53 Q. And did you get a questionnaire to fill out?

The COURT. January 1941?

The WITNESS. Yes, sir.

The COURT. Was that before you went into the seminary?

The WITNESS. Yes, sir.

Q. And did you get a questionnaire to fill out?—A. Yes, sir.

Q. Did you fill out the questionnaire?—A. I did.

Q. Did you return with it to the clerk of the Local Board?—A. Yes, sir.

Q. Did you there have a conversation with him?—A. I did.

Q. Don't tell us what you said to him. As a result of this conversation with him did you do anything in connection with that questionnaire?—A. He advised me to—there was a special paragraph at the end of the questionnaire asking registrant which classification he thought he merited, and he advised me to put down classification of 4-D.

The COURT. Did you?

The WITNESS. I did, sir.

Q. But you were not at that time a student of the seminary yet?—A. I was not.

54 Q. When did you make formal application for admission to the Rabbinical Seminary of America?—A. In April 1941.

Q. Why did you wait until April 1941?—A. Because I didn't feel I was prepared sooner than that.

Q. When were you accepted?—A. I was accepted in May 1941.

Q. Whom did you see when making application?—A. I saw the head of the school, Rabbi David Leibowitz of blessed memory.

Q. For what term of the school were you accepted?—A. I was accepted for September 1941.

Q. Was that the following term after your application?—A. That's right.

Q. Did you advise the Local Board of your acceptance by the seminary?—A. I did, sir.

Q. Was that in writing?—A. Yes, sir.

Q. And did you receive a 4-D classification from the Local Board immediately?—A. I did not.

Q. What happened?—A. I presented the Local Board with my evidence.

The COURT. When?

The WITNESS. I imagine it was some time in May; I presented the letter from the seminary and also statement from the Jewish Theological Seminary that I had attended courses there
55 from 1935 until 1939, and an affidavit from Rabbi Levine stating that I had been studying with him in preparation for entering the Seminary from 1939 until 1941.

Q. What did the Local Board do about that?—A. I received a 1-A from the Local Board.

The COURT. When were you classed as 1-A?

The WITNESS. That was I believe July 1, 1941.

Q. And did you take an appeal?—A. I did, sir.

Q. And what happened on the appeal?—A. On the appeal I received number 1-A.

Q. And did you take the matter up with any higher Selective Service authority?—A. I did, sir.

Q. What did you do?—A. I went to Washington to discuss my case with Selective Service Headquarters.

The COURT. All right. Did you get a reversal of your classication?

The WITNESS. Yes, sir; I talked to Mr. Davidson and he said——

The COURT. Never mind what he said. Did your Local Board reverse the classification?

The WITNESS. In October of 1941 I received a 4-D.

Mr. KREEGER. Have you seen a letter here from Major Durham?

56 Mr. STANZIALE. I don't know. There are a lot of letters in there, I don't know which is which.

Mr. KREEGER. It was in here this morning.

Mr. STANZIALE. If it was there this morning it should be there now.

Mr. KREEGER. Will your Honor bear with me? This is arranged not in chronological order. I should like to read to your Honor a short letter.

The COURT. Let me have it.

Mr. KREEGER. Yes, surely.

The COURT. All right, carry on. Now you have him down to October 2nd, when he was placed in 4-D.

Q. And did you subsequently receive a card from the Local Board continuing you in 4-D?—A. I did, sir.

Q. And is this the card you received?—A. Yes, sir.

Mr. KREEGER. Offered in evidence.

The COURT. The whole file is in evidence. What is the card?

Mr. KREEGER. This is a card that is not in the file that is dated

December 4, 1943 to the registrant that he is retained in Class 4-D until further notice.

Mr. STANZIALE. There is no dispute about that.

Mr. KREEGER. In your file you have a different date, December 2nd; we have it December 4th. We want no differences as to dates.

57 The COURT. December 4th.

Mr. KREEGER. That is the card we got; we don't know what the Local Board did.

The COURT. December 4th was the notice mailed that you received?

The WITNESS. Yes, sir.

The COURT. Informing you that you were retained in Class 4-D until further notice?

The WITNESS. Yes, sir.

The COURT. All right.

Q. When did you next hear from the Local Board?—A. I received a communication from them I believe some time in April 1944, directing me to appear for a preinduction physical examination.

Q. And did you so appear?—A. I did, sir.

Q. And when did you next hear from Selective Service?—A. It must have been some time toward the end of April.

Q. Nineteen——A. 1944.

Q. And what was that message?—A. It was a letter from City Selective Service Headquarters requesting me to appear before—I don't know what was the language of it, but I was supposed to appear at City Selective Service Headquarters.

Q. And did you appear?—A. I did, sir.

Q. And before how many gentlemen did you appear?—

58 A. I appeared before three gentlemen.

Q. And were you asked the questions?—A. I was, sir.

Q. And did you make answers—A. I did, sir.

Q. And after that did you hear further from the Local Board?—A. I did; I received a 1-A from the Local Board.

Q. When?—A. In May 1944.

Q. Was it May 11?—A. Yes, sir.

Q. And did you ask for a hearing by the Local Board?—A. I did.

Q. And did you have the hearing before the Local Board?—A. I was told that I would be sent to Rabbi Schorr and that my file would be sent down to him and he would determine whether or not I was a bona fide divinity student, and I was told that upon his decision——

The COURT. All right. On June 1, 1944, you were reinstated as 4-D?

The WITNESS. I was.

Q. After June 1, 1944, when you received your 4-D classification, did you hear anything further from the Local Board?—A. I received a notice to come down to the board and when I came—I don't remember the time—I think it was——

Q. In August?—A. I think it was in August—I was told I would be put into 1-A.

59 Q. And did you have any conversation with the members of the Local Board at that time?—A. Yes, I did. And if I may go back——

Q. Just at that time I am asking about. August '44—A. I was told that while these people would have been satisfied to keep me in 4-D classification, they had had continual notices from headquarters concerning me and they didn't want to have any more discussions about it, and they decided to put me in 1-A.

Q. And did you file any further papers with the Local Board?—A. I did, sir.

Q. And did you ultimately have an appeal to the Appeal Board on that classification?—A. I did.

Q. And what did the Appeal Board do? A. I was given again a 1-A.

Q. And eventually did you receive an induction notice?—A I did.

Q. And as a result of that you were inducted into the Army service?—A. I was.

Q. Now, Mr. Horowitz, throughout the years 1935 to 1940—the end of 1944, and down to the present day, what has been your intention as to your professional life?—A. I wanted to become a rabbi.

Q. Have you at any time during those years wavered in your intention?—A. No, sir.

Q. Have you been engaged in any religious activities
60 since 1939 for which you received compensation?—A. Yes, sir.

Q. What were those activities?—A. I taught in a religious school. I always served as a cantor and recently was serving as assistant to the rabbi in my congregation.

Q. Where was that congregation?—A. Mount Vernon.

Q. How long have you been affiliated with that congregation?—A. I have been affiliated with that congregation, oh, it is about a year now; since April 1944.

Q. Were you the instructor of the religious school there before you became the assistant to the rabbi?—A. Yes, sir.

Q. For how long?—A. That was from April until September of 1944.

Mr. KREEGER. Your witness.

Cross-examination by Mr. STANZIALE:

Q. Mr. Horowitz, in February of 1941 you had applied for readmission to enter the City College of New York, did you not?

The COURT. February when?

Mr. STANZIALE. 1941.

A. I had applied previously but I hadn't been accepted before that time.

61 Q. When was the last time prior to February 1941 that you attended City College?—A. It was the term of February 1940. There was a gap of the term.

Q. Now, you received a questionnaire in the early part of January, did you not?—A. I did.

Q. And you sent your answers on the questionnaire in January, the 24th, 1941, did you not?—A. I don't remember the exact date, but it was in January.

Q. And attached to the questionnaire there was a supplemental statement, was there not?—A. Yes, sir.

Q. Now, I show you the questionnaire with the supplemental statement attached and I ask you if the supplemental statement attached is a supplemental statement that you sent with your questionnaire?—A. It is.

Q. Now, is it not a fact that in the questionnaire—in the supplemental statement with the questionnaire, you stated that your vocation or your work for which you had prepared yourself or intended to prepare yourself was as a psychiatric social worker?—A. I did, sir.

Q. And is it also not a fact in your supplemental statement that you desired the board to have you continue your studies at the college until February of 1943, so that you could prepare yourself for this social work?—Yes, sir.

62 Q. And is it also not a fact that at no time in your supplemental statement did you state to the board that you were preparing yourself for the rabbinate; is that correct?—A. That is right.

Q. Now, is it also not a fact that after the filing of your questionnaire and not until September semester of 1941, did you actually begin or continue your studies for the rabbinate?—A. I don't understand that question.

Q. Well, did you not in the September semester take up your studies for the rabbinate?—A. I had been preparing straight along; I was not a member of the seminary until September, but I had been in preparation up until that date.

Q. But you started attending the seminary in October 1941, and after you had filed your questionnaire with the Draft Board?—A. Yes, sir.

Q. Now, is it also not a fact that on January the 1st—I withdraw that.

What was your first classification that you received from your board after the receipt of your questionnaire with the supplemental statement attached?—A. 1-A.

Q. Very well. Can you tell us when that was?—A. Well, it was the early part of 1941, but I don't remember exactly.

Q. Was it in the month of February or March?—A. It might have been; I don't remember.

63 Q. And then you later received a 1-A classification on July 1, 1941; isn't that so?—A. Yes, sir.

Q. And it was only after you had sent a statement to the effect that you were beginning your studies in a seminary in September of 1941, that that classification was changed; isn't that so?—A. Yes.

Q. Did the fact that you had received a 1-A classification—Did you take it upon yourself to go to a seminary in order to obtain a 4-D classification?—A. Most assuredly not.

The COURT. Well, why did you say in your application there in 1943, you "would be a happy, joyous, glad person to volunteer for service"?

The WITNESS. If I may explain, the entire——

The COURT. No; just answer that question. At that time when you filed your questionnaire, the only thing you were concerned with was finishing so that you could become a social worker.

The WITNESS. Well, at that time I was a predivinity student—I was not aware——

The COURT. No; at that time were you going into the rabbinate or not?

The WITNESS. I was, sir.

The COURT. Because in 1943 you said you would gladly go into the Army.

64 The WITNESS. I was at that time going into the rabbinate.

The COURT. Well, were you going into the rabbinate or were you going into the Army in 1943; which?

The WITNESS. I was going into the rabbinate, sir, but I filed that paper at that time and I did not know that there was such a thing as predivinity classification and I asked——

The COURT. Yes; but you didn't say you were studying for the divinity; you said you were studying for a psychiatric worker.

The WITNESS. That's true; I was studying that course because that is what I considered——

The COURT. A position you thought you liked.

The WITNESS. That is what I considered a very important complement to the rabbinate.

The COURT. Why didn't you use the word "rabbinate" in this whole application?

The WITNESS. Because, sir, I was not at that time a member of a rabbinical school.

The COURT. Why didn't you say you were going to be a rabbi instead of a psychiatric worker?

The WITNESS. Because at that time the only thing offi-
65 cially recognized by the Local Board was my college studies; I was not a predivinity student and I didn't know of any——

The COURT. Well, why didn't you say you were going to be a rabbi instead of saying you were going to be a psychiatric social worker? They are not identical. The only religious thing you indicated or you did speak about was being a cantor, and then you say, "As a dejected person I could be of little value to an army, but as a grateful person two years later I would come willingly with blessings on my lips and in my heart for the justice which had been meted out to me."

Q. Now, in 1936, when you were going to school——

The COURT. Let's come down to a later time.

Mr. STANZIALE. Very well, sir.

The COURT. Let's come down to the date of the first application when the Board classified him in 1-A; then it was appealed and the classification 4-D was given.

Mr. STANZIALE. Yes, your Honor; yes, sir.

The COURT. Now, was that on a rehearing or what?

Mr. STANZIALE. Yes, your Honor; I will bring it right out.
66 The COURT. Let's get right down to it.

Q. Now, you appeared before a theological panel, did you not?—A. I did.

Q. And you were asked questions by the members composing the theological panel?—A. I was.

Q. You later were called before the board, were you not, after your appearance before Rabbi Schorr?—A. After my appearance before Rabbi Schorr.

Q. Yes; and after your appearance before the theological panel at the both hearings?—A. At the both hearings, after the Rabbi Schorr, I received 4-D.

Q. Then you were called before the board?—A. That's right.

Q. And before the board you were questioned by the board, weren't you, in the early part of August?—A. Yes.

Q. As a result of the hearing that you had before the board, you then received the 1-A classification, isn't that so?—A. The fact is that it wasn't a hearing as far as I remember and understand; they had told me that I was getting a 1-A and they did not ask me——

Q. They asked you questions?—A. They asked me just one question and told me I was getting a 1-A.

The COURT. What did they ask you about?

The WITNESS. They asked me about the change from 1936
67 to 1937 of the order of the rabbinate from number 1 to number 2 in my choice.

Q. You then got a 1-A classification, didn't you?—A. I did.

Q. And then you appealed this 1-A classification?—A. I did.

Q. And you stated the grounds for your appeal?—A. Yes.

Q. And all your files together with the grounds for your appeal were submitted to the Appeal Board?—A. Yes.

Q. And the Appeal Board sustained the finding of the Local Board?—A. Yes.

Q. And then you were inducted in the Army?—A. No; I asked for a hearing before my Local Board.

Q. And you were turned down again, weren't you? Answer the question so that the stenographer can hear you.—A. Yes.

Q. And then wrote a letter, did you not, bearing the date of December the 15th, 1944—this is in your handwriting, sir?—A. Yes.

Mr. STANZIALE. May I have it, please?—A. [handed to Mr. Stanziale]

Q. And in your letter you asked for a determent of your induction until after your wife gave birth to a child?—A. That's right.

68 Q. And in order to meet your medical expenses?—A. Yes.

Q. And in order for some one to replace you in the congregation; is that correct?—A. Yes; that was after I had been established, that I had been turned down by the Appeal Board.

Q. All the facts that you have testified to today were taken up before the Appeal Board—were taken up before the Local Board and the Appeal Board and they were passed on?

Mr. KREEGER. I object to that. He has no knowledge of what was taken up.

Q. Well, you submitted documents, did you not?

The COURT. Well, the documents are in the record.

A. I did.

Q. And the documents contain substantially the same testimony you are giving today?—A. Yes.

Mr. STANZIALE. I have no further questions, Judge Meaney.

Redirect examination by Mr. KREEGER:

Q. Now, when this statement in yellow paper was handed in by you, was your questionnaire on file at the Local Board?—A. I handed it in together with my questionnaire.

69 Q. And was it at the same time that at the suggestion of the clerk, you filled in "4-D" in your questionnaire?—A. Yes.

Q. So that when this yellow statement went in, yellow page statement went in, the questionnaire was on file with your 4–D application?—A. Yes, sir.

Q. In referring to the letter of December 15, 1944, in which you ask that your induction be deferred for 90 days, was that for the purpose of enabling you to make certain family adjustments?—A. Yes, sir.

Q. And take care of certain obligations?—A. Yes, sir.

Q. Did you mean thereby to waive your position as a rabbinical student?—A. Most certainly not.

Q. When you appeared before the Local Board in August 1944, were you shown by the Local Board the communication from headquarters concerning your 1937 City College questionnaire?—A. Yes, sir.

Q. And did the Local Board members say anything to you about it at that time?

Mr. STANZIALE. I object, sir.

The COURT. I will allow it.

Q. Did they?—A. They gave me the impression, sir——

The COURT. No; did they say anything to you about it.

Q. What did they say to you in giving the impression,
70 the substance of what they said that you don't remember exactly?—A. Well, substantially, I would think it was that they would have been satisfied to accept their opinion which they gave as a result of Rabbi Schorr's letter, but that they had received a communication from headquarters which was forcing them to do otherwise.

Q. Now, this communication from headquarters——

The COURT. Is it in the file?

Mr. KREEGER. It is in the file, your Honor.

Mr. STANZIALE. I don't remember seeing a letter to that effect, sir, in the file.

Mr. KREEGER. There was a communication from, I believe——

Mr. STANZIALE. Headquarters, requesting the reopening of the 4–D classification, but there was nothing in the file, Mr. Kreeger, indicating that the City Selective Service imposed its will upon this board to change its classification.

Mr. KREEGER. That is a question——Can I have that letter, please?

Mr. STANZIALE. You look there and I will see if it is here.

Mr. KREEGER. May I have it?

Mr. STANZIALE. Yes, surely; it is part of the record; suppose we show it to Judge Meaney.

71 Mr. KREEGER. No; I want the letter which came after he had received the 4–D.

The COURT. Look it over. I will take a three-minute recess. See if you can find it.

(A short recess was taken.)

Mr. KREEGER. Evidently, your Honor, the local file submitted here is not complete, because we have copy of letter that was taken from the Local Board file by the registrant in August, but the original is not in the file.

The COURT. That is the file as presented, sir.

Mr. KREEGER. Well, of course, we don't know whether everything is in it until we come across the item, but I can state to your Honor now definitely that this is not the complete file of the Local Board record.

The COURT. Well, what is the letter that you say isn't there?

Mr. KREEGER. Letter from Captain Richter, Chief of the Legal Division of the Selective Service in New York. I have a copy here I can read it to your Honor, it will show that it is important: "We return herewith the cover sheet and file of the above registrant forwarded to this Headquarters"——

72 Mr. STANIZALE. Just a minute, we may save some time. If there is such a letter I want it to be produced; if it should be in here I want it.

Mr. KREEGER. There is also a Communication from the Director of Student Personnel Bureau of the College of the City of New York relative to the registrant, and an official transcript of the latter's record certified by an assistant registrar of the College: "It will be noted that while in September 1936, registrant indicated his vocational preference in the following order: (1) rabbinate; (2) teaching mathematics, and (3) lawyer and C. P. A., his first choice one year later, September 1937, was teacher, with rabbi and lawyer in second and third place respectively"—and this is the important part of the letter to me: "In view of the importance of the question of intention in the present case (see our letter of June 5) it is requested that the Local Board reopen and reconsider the registrant's classification of June 1st in the light of the additional information presented and advise this Headquarters of the action taken in the matter." In other words, Selective Service Headquarters said that since rabbinate appeared first in 1936 on his list of choices, and second in 1937 on his list of choices, that showed a question of intention in the

73 present case in 1944, under which the case should be reopened.

The COURT. Well, reopening it doesn't necessarily mean they have to follow directions.

Mr. STANZIALE. Or imposing its will. May I show the Court a copy of the letter, so that there may be no misunderstanding?

The COURT. The Local Board could have refused to reopen, could have reconsidered and passed on it. There is nothing in that that directed them.

Q. Is that the letter that the Local Board showed you when you went there in August?

The COURT. Suppose it was, what about it?

Mr. KREEGER. I want to ask him is that the letter in connection with which they had the conversation with him as to which he testified.—A. I believe it is.

Q. And was that the time they had the conversation with you in connection with which you made testimony before the recess?—A. Yes, sir.

Mr. KREEGER. Mr. Stanziale, is this from the Local Board file?

Mr. STANZIALE. No; you referred to such a letter and Mr. Agress had it when I asked if there was such a letter.

74 Mr. KREEGER. May I have the record indicate that the Local Board file did not contain the letter?

Mr. STANZIALE. Well, I don't know, I haven't searched this yet; it may.

Mr. KREEGER. Well, we have searched it, your Honor, both Mr. Willner and myself and we couldn't find any such letter in the file.

The COURT. Well, I don't know if it is in there or not. Was there a letter sent to the Local Board from the City Headquarters?

Mr. STANZIALE. Yes; evidently there was a letter sent. I may state for the record, sir, that the file has been in the hands of Mr. Kreeger; has been all over; not that I am casting any implications, but I don't like that there should be any implication——

The COURT. It was not in the file.

Mr. STANZIALE. But I have asked to produce a copy.

Mr. KREEGER. May I have the record show that the record was only in my possession under the supervision of Lieutenant Lathrop, who did not move from my side. Is that correct, Lieutenant Lathrop?

Mr. STANZIALE. I am not casting any reflections on you.

75 Mr. KREEGER. I just want the record to indicate it, sir.

The COURT. Is that the relator's case?

Mr. KREEGER. That is the relator's case.

Mr. STANZIALE. The Government rests on the exhibit offered in evidence which is the file of the registrant. If there is any preliminary argument your Honor would care to hear——

The COURT. Do you wish to be heard?

Mr. KREEGER. Yes.

The COURT. I don't want to be abrupt, but the only situation I am concerned with is this, whether there is justification for the writ of habeas corpus to pass on the question of whether or not this man was the object of such ill-considered action on the part of the board as would justify my having him discharged. Now, the only thing that I am concerned with is whether the board acted capriciously and arbitrarily. I don't care about his actual inten-

tion, because I am not going into that; I am going into whether the record shows that the board had any credible evidence upon which to act in its classification. I am willing to admit that by the fact that the board shifted, that it did show indecision, but its final determination was to classify this applicant as 1–A.

76 Now, what about the record indicates that their action was arbitrary or capricious?

(Argument by counsel for the relator, Mr. Kreeger.)

The COURT. The only thing that I can pass upon is whether the final determination arrived at by this board was based upon credible evidence. Suppose the board arbitrarily put a man in 4–D when he wasn't even a student of any religion, just did it arbitrarily; and then reconsidered it and placed him in 1–A, then reconsidered it again and placed him in 4–D, then reconsidered it again and placed him in 1–A, and an appeal was taken and the classification of 1–A was sustained. Now, mind you, the 4–D classification was never sustained, but the 1–A was sustained twice on appeal. That does not mean that the board acted without any proper basis. Frankly, it seems to me on the record that the board as it acted finally on August 10th, 1944, no matter what the particular thing which brought the case again to its attention was, it was the letter that you pointed out, and it probably was [illegible] that the question of intent was considered, that did not limit the board in what it might examine. I had the whole file before it, and certainly on the basis of that young man's statement alone,

77 if I were sitting as an appellate board I would say that he had definitely indicated that at the time that he registered he had, if anything, a very slight and remote desire to enter the rabbinate, because he specifically said that what he wanted to do was to get a deferment in order to finish his course and become a psychiatric worker and then, "gaily, happily, and gladly he would come and give himself to his country."

Mr. KREEGER. Might I say to your Honor that all of those facts that your Honor has just covered were before the Local Board throughout the years.

The COURT. I don't care whether they were or not, the question is whether they were before the board on August 10th, 1944, and they were part of the record. In addition to that, the board had had its attention called to another indication, which might have been slight but still was an indication of what the board evidently believed, as did the city Selective Service group, went to the intent.

Now, if I were to sit here, as I say, as an appeal court, which I am not, I would say that certainly I am convinced that this young man was not genuine—from his own statement, definitely

78 not, in a three-page long statement in which he referred to the fact that he was a potential cantor, that he was a potential worker around the synagogue, but that his main idea was to serve humanity as he had self-sacrificingly served humanity for three years, by becoming ultimately a psychiatric social worker, with no mention of his ambition to be a rabbi and only the desire in his heart to secure a deferment for two years which would enable him to achieve his ambition and then he would come back gladly. If I were sitting as an appellate board——

Mr. KREEGER. Which you are not doing.

The COURT. I would say certainly there is evidence there to justify the Draft Board in its classification; and looking over the whole record as I do, and finding that although the board was uncertain, it finally did arrive at a determination; I find that the board did have a proper basis for determination and that they evidently, by their classification of 1-A, which was sustained on appeal, believed that he was not in good faith studying for the rabbinate, and I shall therefore dismiss the writ. You may have an exception to my ruling.

79 (Which exception is hereby allowed and sealed accordingly.) (Sealed.)

Mr. KREEGER. And, your Honor, we are directed to take an appeal in this case by the client to the Circuit Court of Appeals for the Third Circuit.

The COURT. I have tried to make it as easy as possible for that purpose so that it might be taken to the Court, and I shall give you findings of fact and conclusions of law, so that that appeal may be perfected.

Mr. KREEGER. Will the man be retained in the jurisdiction until the appeal is determined?

The COURT. He will be held at Camp Dix.

80 In United States District Court, District of New Jersey

IN THE MATTER OF THE APPLICATION OF HARRY HOROWITZ FOR A WRIT OF HABEAS CORPUS

On Petition No. C-5003.

Appearances: Thorn Lord, Esq., United States Attorney; by Joseph B. Schwartz, Esq., Assistant United States Attorney. Meyer Kreeger, Esq., Member of New York Bar; Willner & Willner, Esqs., by Herman Willner, Esq., Of Counsel, For Relator.

Findings of fact and conclusions of law

Filed June 7, 1945

MEANEY, District Judge.

Findings of fact

This matter came on to be heard on the 16th day of April 1945, in the United States District Court for the District of New Jersey, in the City of Newark and State of New Jersey.

Martin Maury Horowitz, Order No. 972, was a registrant with Local Board No. 104, Bronx County, Bronx, New York. He filed answers to Questionnaire with the above Local Board on January 17, 1941, and filed simultaneously with the Questionnaire a supplemental statement. In the Questionnaire he answered under Series III, Question #2, that he attended City College, New York, and that his course of study was social science for a period of three years. In Series IV of said Questionnaire, under "Occupation or Activities" in answer to Question #6 he stated that he was a student preparing for psychiatric social work. In the supplemental statement the subject stated that he had dedicated himself to work of social service and requested a deferment until February 1943 in order to complete his studies, and would then be in a position to have saved enough money to tide him over after his years of service.

81

I find that in the Questionnaire and in the supplemental statement Martin Maury Horowitz gave his occupation for which he was preparing as a social worker, and not as a student preparing for the Rabbinate. In September 1937, Martin Maury Horowitz while attending City College of New York stated that his choice of vocation was that of a teacher, and secondly that of a Rabbi.

On May 2, 1944, he appeared before an Advisory Panel on Theological Classifications, which Panel determined he was not a bona fide Rabbinical Student. Martin Maury Horowitz on August 10, 1944, wass reclassified 1-A, and on August 24, 1944, was continued in 1-A after a hearing by the said Local Board. Another rehearing was had on September 5, 1944, and the subject again continued in 1-A. On an appeal to the Appeal Board, the Appeal Board on December 1, 1944, affirmed the finding of the Local Board and classified the subject 1-A.

Conclusions of law

Martin Maury Horowitz's entire case was reviewed by the Advisory Panel of Theological Classifications. Local Board No. 104 on August 10, 1944, reclassified the subject 1-A. The reclassification of 1-A continued after hearings on August 24 and September 5, 1944. The Appeal Board on December 1, 1944, affirmed the findings of the Local Board.

I find as a matter of law, that a full hearing was had before the Local Board and the Appeal Board with all
82 documents pertaining thereto and the entire Selective Service record, and that there was evidence before the Local Board and the Appeal Board justifying their classification.

I find as a matter of law, that the action of the Local Board in classifying the subject 1-A was neither arbitrary nor capricious.

I find that Martin Maury Horowitz has been given ample hearings before the Local Board and the Appeal Board by which he was classified 1-A, and that he was regularly inducted into the United States Army pursuant to the Selective Service Act of 1940, as amended from time to time, and that he is now properly inducted in the armed forces of the United States and ordered to Fort Dix, New Jersey, for processing.

The Writ of Habeas Corpus is hereby denied.

83 In United States District Court

[Title omitted.]

Order dismissing writ

Filed May 14, 1945

A writ of Habeas Corpus having been issued herein on the 26th day of March 1945 upon the duly verified petition of Harry Horowitz for and on behalf of his son, Martin Maury Horowitz, and a return having been made to said writ by General M. Pierson, Post Commanding Officer at Fort Dix, New Jersey, and the relator Harry Horowitz having filed his traverse to said matter and the matter coming on for hearing before this Court on April 16, 1945, and the Court having heard testimony of witnesses and the arguments of counsel and being of the opinion that a full hearing was had and afforded to the said Martin Maury Horowitz by his local Selective Service Board and Appeal Board and that there was ample evidence before the said local Selective Service Board and Appeal Board justifying the classification of said Martin Maury Horowitz so that he was regularly inducted into the United States Army pursuant to the Selective Training and Service Act of 1940 as amended;

It is therefore, on this 14th day of May 1945, ordered that the Writ of Habeas Corpus heretofore issued in this cause on March 26, 1945 be and the same is hereby dismissed.

[S] THOMAS F. MEANEY,
Judge, United States District Court.

84 In United States District Court

[Title omitted.]

Notice of Appeal

Filed, May 29, 1945

SIRS: Please take notice that Harry Horowitz, the relator herein, hereby appeals to the United States Circuit Court of Appeals, Third Judicial Circuit, from the order made in this proceeding by Hon. Thomas F. Meaney, Judge of the United States District Court, on the 14th day of May 1945, and filed in the office of the Clerk of the United States District Court for the District of New Jersey on the 14th day of May 1945, dismissing the Writ of Habeas Corpus issued in this cause on March 26, 1945, and said Harry Horowitz, the relator herein, hereby appeals from each and every part of said order, as well as from the whole thereof, on both questions of law and on questions of fact.

Dated May 29, 1945.

Yours, etc.

WILLNER & WILLNER, Esqs.,
594 Summit Avenue, Jersey City 6, N. J.
Attorney for Relator Harry Horowitz.

To THORN LORD, Esq.,
United States Attorney
For the District of New Jersey.
BENJAMIN F. HAVENS,
Clerk of the U. S. District Court,
For the District of New Jersey.

85 In United States District Court

[Title omitted.]

Designation of record

Filed Aug. 23, 1945

The following are hereby designated to constitute the Record on Appeal in the Above Case, it being intended in this designation to include all the pleadings, findings of facts, order, notice of appeal, all of the testimony and all of the exhibits:

1. Petition of Harry Horowitz.
2. Writ of Habeas Corpus.
3. Return to Writ.
4. Traverse.
5. Findings of Fact.
6. Order of Judge Meaney dismissing writ.

7. Notice of Appeal from Judge Meaney's order.

8. Complete transcript of testimony before Judge Meaney, taken April 16, 1945.

9. The entire file of the Local Board which was received and marked Government's Exhibit 1, at page 13 of the testimony.

10. Photostatic copy of Relator's Exhibits 1, 2, and 3.

Two copies of each of the above designated are attached hereto to form the Appellant's Record on Appeal, excepting that the exhibits, consisting of the Local Board file, are being photostated by the Clerk in duplicate and when so photostated will constitute a portion of this record.

Please note further that the above designation contains all of the pleadings, findings, order, proceedings, testimony, and exhibits in the case, so that there is nothing further to be added
86 by respondent to this designation. If by error the above designation should have excluded any portion of the papers on file, it is respectfully requested that the Clerk prepare two copies of the same for inclusion in the Record and charge the cost of such preparation to the relator.

WILLNER & WILLNER,
Attorneys for Relator-Appellant,
591 Summit Avenue, Jersey City, N. J.

To: WILLIAM H. TALLYN,
Clerk of the U. S. District Court,
District of New Jersey.

87 [Clerk's certificate to foregoing transcript omitted in printing.]

88 In United States Circuit Court of Appeals for the Third Circuit

Docket No. 8992

IN THE MATTER OF THE APPLICATION OF HARRY HOROWITZ FOR A WRIT OF HABEAS CORPUS

Order to show cause

Filed Oct. 10, 1945

On reading and filing the annexed affidavit of Meyer Kreeger, sworn to the 8th day of October 1945, and upon the writ of habeas corpus issued herein by Mr. Justice Meaney of the United States District Court for the District of New Jersey, and the petition on which it was granted, upon the Notice of Appeal and the Record on Appeal, and upon the brief for appellant and appendix filed in

this Court on the 28th day of September 1945, and upon all of the papers and proceedings herein had,

Let the respondent-appellee, Brigadier General Madison Pearson, Post Commanding Officer, Fort Dix, New Jersey, his representatives and aides who may have had the custody of Martin M. Horowitz up to October 8, 1945, show cause on Thursday, October 11, 1945, at 10:30 A. M. in the forenoon of that day, at the Courthouse, 9th and Chestnut Streets, Philadelphia, Pa., why an order should not be made herein, directing the return of the said Martin M. Horowitz, relator's son, to the jurisdiction of this Court, and why during the pendency of and until the determination of the appeal herein after the said return of relator's son to the jurisdiction of this Court the said Brigadier General Madison Pearson, Post Commanding Officer, Fort Dix, New Jersey, his representatives and aids who may then have the custody of the said Martin M. Horowitz should not be stayed, enjoined and restrained from removing or causing the said Martin M. Horowitz to be removed from the jurisdiction of this Court and/or the territorial limits of this Court.

89 Sufficient cause appearing therefor, let service of a copy of this order to show cause, together with the attached affidavit, upon the office of the U. S. Attorney in Trenton, New Jersey, on or before 2 P. M. o'clock of Wednesday, October 10, 1945, be deemed good and sufficient service.

Dated: Philadelphia, Pa., October 10, 1945.

GOODRICH,
U. S. Circuit Court Judge
For the Third Circuit.

90 In United States Circuit Court of Appeals

[Title omitted.]

Affidavit of Meyer Kreeger

Filed Oct. 10, 1945

Meyer Kreeger, being duly sworn, deposes and says:

1. That he is of counsel for the above named relator-appellant and makes this affidavit in support of the within Order to Show Cause to direct the return of relator's son to the jurisdiction of this Court.

2. That relator's son, Martin M. Horowitz, a student preparing for the rabbinate in a recognized theological seminary on the Selective Service List was inducted into the Armed Forces of the United States.

3. That on relator's application a writ of habeas corpus was

obtained, signed by Mr. Justice Meaney of the United States District Court for the District of New Jersey. After the hearing the writ was dismissed and Findings of Fact and Conclusions of law were entered on June 7th, 1945. At the close of the hearing the Court directed (SM 61) that relator's son be continued in custody at Fort Dix, New Jersey until the determination of the Appeal.

4. That because of the decision favorable to a relator by the Circuit Court of Appeals, Second Circuit in the case of U. S. ex rel Levy v. Cain, 149 Fed. (2d) 338, deponent was advised by Mr. Hull, the Assistant U. S. Attorney for New Jersey, that the file in this case, as well as in a number of similar cases in
91 which deponent is counsel, was requested by and sent down to Washington during the summer for review with the possibility that the rule of the Second Circuit might be applied to this case. Because of that, it was agreed to withhold filing of the record until Washington determined its policy.

5. That on August 10, 1945, deponent was advised by Mr. Hull that Washington had decided to contest the appeal. His language is as follows:

"Referring to the above case, you are now advised that we have decided to contest the appeal. We desire that you proceed promptly, and, for the reason that the appellant's military status remains unsettled, that you comply in full with the time limitations of the rules of the Third Circuit Court."

6. That accordingly, deponent caused two copies of the record to be filed on August 30, 1945, and on September 28, 1945, the appellant's brief and appendix were filed in this Court and copies served upon the U. S. Attorney in New Jersey.

7. That during all of this time the said Martin M. Horowitz, relator's son, was kept in custody at Fort Dix pursuant to the lower court's original order.

8. That deponent has been advised this day by telephone call from the said Martin M. Horowitz that he has been shipped away from Fort Dix and outside of the jurisdiction of this Court.

8. That deponent has telephoned the Second Army Command and spoken to Major Carey, and was advised that Martin M. Horowitz was shipped to a camp which is outside of the territorial limits of this Circuit. Deponent has also spoken to Mr. Hull, the Assistant U. S. Attorney, and was similarly apprised of the same fact. Both Mr. Hull and Major Carey stated orally that Martin M. Horowitz would be returned to the jurisdiction of this court immediately upon the order of this Court at any time.

92 9. Deponent also spoke, today, to Major Samuel Beech of the Judge Advocate General's office in Washington, D. C., who also stated that if the Court should make a direction to that

effect Martin M. Horowitz would be returned immediately to the jurisdiction of the Third Circuit.

10. That deponent has been further advised this day that Martin M. Horowitz has been removed to Camp Belvoir, Virginia, which is outside of the territorial jurisdiction of this Court.

11. That the rights of the relator-appellant herein has been impaired by the removal from this jurisdiction for it may make his case entirely moot under the authority of the United States Supreme Court in the case of U. S. ex rel Lynn v. Downer, 322 U. S. 756; rehearing denied 65 S. Ct. 426, where it was held that a removal of the soldier in a similar case from the jurisdiction rendered the question moot and thus prevented relator in that case from obtaining a final determination of his case.

12. That Rule 17 of this Court, subdivision 4, specifically says: "The initial order respecting the custody or enlargement of the prisoner pending review, as also any recognizance taken, shall be deemed to cover not only the review in this court but also the further possible review in the Supreme Court; and only where special reasons therefor are shown to this court will it disturb that order, or make any independent order in that regard."

13. That this Court has made no order in that regard in this case respecting custode, nor has any further order been made or entered, to the best of deponent's knowledge, by the lower court.

14. That if the Army authorities be allowed to remove relator's son in this case from the jurisdiction of this Court and to keep him so removed in the State of Virginia, where deponent is advised and verily believes he is at present, then the same Army
93 authorities can continue to remove him to any other portion of the country and make it impossible for the relator to obtain a final determination of his case. That such a practice would result in obtaining writ after writ in the various jurisdictions to which the man is moved and would make the remedy of habeas corpus practically futile.

15. That in view of the fact that this appeal can be heard in November, as the appellee's brief will be due on October 18th, 1945, and in view of the fact that the Government is prepared to return the man to this jurisdiction if the Court so orders, deponent respectfully asks this Court for an order directing the respondent-appellee to return relator's son, Martin M. Horowitz forthwith to the jurisdiction of this Court.

16. That deponent makes this affidavit in person because he is acquainted personally with the facts herein stated.

17. That no previous application has been made for this or similar relief to any other Court or Judge.

18. That because of all of the above, deponent moves by way of an Order to Show Cause and respectfully asks that this Order be made returnable Thursday, October 11, 1945.

MEYER KREEGER.

Sworn to before me this 8th day of October 1945

[SEAL] MAX L. FINKLESTEIN.

[File endorsement omitted.]

94 In United States Circuit Court of Appeals
[Title omitted.]

Order assigning judge

Filed Oct. 11, 1945

And now, to wit: this 11th day of October A. D. 1945, it is ordered that Hon. Albert Lee Stephens, U. S. Circuit Judge, for the Ninth Circuit be, and he is hereby assigned to sit in above case in order to make a full court.

GOODRICH, *Circuit Judge.*

95 In the United States Circuit Court of Appeals
[Title omitted.]

Minute entry

And afterwards, to wit, the 11th day of October 1945, come the parties aforesaid by their counsel aforesaid, and this case being called for hearing on Appellant's Motion for Rule to Show Cause, before the Honorable Herbert F. Goodrich, Honorable Albert Lee Stephens and Honorable Gerald McLaughlin, Circuit Judges, and the Court not being fully advised in the premises, takes further time for the consideration thereof.

And afterwards, to wit, on the 22d day of October 1945, come the parties aforesaid by their counsel aforesaid, and the Court, now being fully advised in the premises, renders the following decision:

96 In United States Circuit Court of Appeals

[Title omitted.]

Order Denying Application for Return of Relator's Son to This Jurisdiction and for Injunction, etc.

Filed Oct. 22, 1945

Before ALBERT LEE STEPHENS, GOODRICH, and MCLAUGHLIN, Circuit Judges

On this 22nd day of October 1945, the application for return of relator's son, Martin M. Horowitz, to the jurisdiction of this Court, and for injunction, enjoining and restraining Brigadier General Madison Pearson, Post Commanding Officer, Fort Dix, New Jersey, his representatives and aides from removing said Martin M. Horowitz from the jurisdiction of this Court is herewith ordered denied.

[File endorsement omitted.]

GOODRICH, *J.*

97 In the United States Circuit Court of Appeals

[Title omitted.]

Minute entry

And afterwards, to wit, the 9th day of November 1945, come the parties aforesaid by their counsel aforesaid, and this case being called for argument sur pleadings and briefs, before the Honorable Albert B. Maris, Honorable Herbert F. Goodrich and Honorable John J. O'Connell, Circuit Judges, and the Court not being fully advised in the premises, takes further time for the consideration thereof.

And afterwards, to wit, on the 15th day of November 1945, come the parties aforesaid by their counsel aforesaid, and the Court, now being fully advised in the premises, renders the following decision:

98 In United States Circuit Court of Appeals for the Third Circuit

No. 8897—October Term, 1945

UNITED STATES EX REL. JACOB S. SAMUELS, APPELLANT

v.

GENERAL MADISON PEARSON, POST COMMANDING OFFICER, FORT DIX, NEW JERSEY

No. 8992—October Term, 1945

UNITED STATES EX REL. HARRY HOROWITZ, APPELLANT

v.

GENERAL MADISON PEARSON, POST COMMANDING OFFICER, FORT DIX, NEW JERSEY

Appeals From Orders of the District Court of the United States for the District of New Jersey

Argued November 9, 1945

Before MARIS, GOODRICH, and O'CONNELL, Circuit Judges

Opinion of the Court

Filed November 15, 1945

PER CURIAM.

The relators in these two cases claimed exemption from military training and service under the Selective Service Act. The claim of each was based upon the asserted fact that he was
99 a student preparing for the ministry. The local board of each at first granted him exemption but, after receiving from the New York City Director of Selective Service the statement and recommendation of a "advisory panel on theological classifications" and after further proceedings not necessary here to relate, cancelled his exemption and reclassified him in Class IA. Each was subsequently inducted into the army and then sued out a writ of habeas corpus in the district court, which after hearing that court discharged. The present appeals followed.

In each of these cases, as in the case of United States ex rel. Levy v. Cain, 149 F. 2d 338 (C. C. A. 2, 1945), the membership of the "advisory panel" was cloaked in anonymity, its statement not being signed, and the identity of its membership not being disclosed to the relator or appearing in the record of the proceedings before the local board. In each case it made through the New York City Director of Selective Service a recommendation to the local board as to the action which the board should take.

We fully agree with the conclusion reached by the Circuit Court of Appeals for the Second Circuit that the interjection of the statement and recommendation of the "advisory panel" into the proceedings of the local boards vitiated those proceedings and rendered the relators' reclassification and induction invalid. The reasons for this conclusion are stated in Judge Learned Hand's opinion in the cited case with such clarity and force as to require no amplification by us.

Accordingly in each case the order of the district court is reversed and the cause is remanded to that court with directions to discharge the relator from military custody, without prejudice to further lawful proceedings under the Selective Service Act in his case.

100 In the United States Circuit Court of Appeals
for the Third Circuit

No. 8992—October Term, 1945

UNITED STATES OF AMERICA, EX REL HARRY HOROWITZ, APPELLANT

vs.

GENERAL MADISON PEARSON, POST COMMANDING OFFICER, FORT DIX, NEW JERSEY

Judgment

Filed Nov. 15, 1945

Present MARIS, GOODRICH, and O'CONNELL, Circuit Judges

On appeal from the District Court of the United States, for the District of New Jersey

This cause came on to be heard on the transcript of record from the District Court of the United States, for the District of New Jersey, and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this Court that the judgment of the said District Court in this case be, and the same is hereby reversed, and the cause is remanded to that court with directions to discharge the relator from military custody, without prejudice to further lawful proceedings under the Selective Service Act.

By the Court,

MARIS, *Circuit Judge.*

NOVEMBER 15, 1945.

[File endorsement omitted.]

101 In United States Circuit Court of Appeals for the
Third Circuit

[Title omitted.]

Petition for recall of mandate, etc.

Filed Dec. 12, 1945

Edgar H. Rossbach, United States Attorney for the District of

New Jersey, by Grover C. Richman, Jr., Assistant United States Attorney, respectfully shows that:

1. On or about May 14, 1945, by virtue of an Order of that date entered in the United States District Court for the District of New Jersey by Honorable Thomas F. Meaney, Judge, a Writ of Habeas Corpus heretofore issued in this cause on March 6, 1945, was dismissed.

2. Thereafter, Harry Horowitz, the Relator-Appellant, perfected his appeal in this Court and on November 15, 1945, by its opinion of that date, this Court reversed the aforesaid Order of the District Court and remanded the cause to the United States District Court for the District of New Jersey, and to that end a Mandate has been filed with the Clerk of the United States District Court for the District of New Jersey.

3. Consideration is presently being given to the advisability of making application to the Supreme Court of the United States for a Writ of Certiorari, in order to review a decision of this Court referred to above.

Your petitioner therefore prays that an Order be entered, nullifying the Mandate heretofore filed with the Clerk of the
102 United States District Court for the District of New Jersey, and that this cause be returned to this Court so that the proceedings contemplated may be perfected.

Your petitioner further prays that an Order to Show Cause issue, directed to the Relator-Appellant, requiring him to show cause before this Court as to why such relief should not be granted.

Edgar H. Rossbach,
EDGAR H. ROSSBACH,
United States Attorney.
By Grover C. Richman, Jr.,
GROVER C. RICHMAN, JR.,
Assistant United States Attorney.

103 [*Duly sworn to by Grover C. Richman, Jr.; jurat omitted in printing.*]

[File endorsement omitted.]

104 In United States Circuit Court of Appeals

[Title omitted.]

Order to show cause

December 12, 1945

Present: MARIS and GOODRICH, JJ.

Upon motion of Edgar H. Rossbach, United States Attorney for the District of New Jersey, by Grover C. Richman, Jr., As-

sistant United States Attorney, and having read the duly verified petition filed herein,

It is, on this 12th day of December 1945, ordered that Harry Horowitz, the Relator-Appellant herein, show cause before this Court on the 7th day of January 1946 at the Federal Building, Ninth and Chestnut Streets, Philadelphia, Pennsylvania at 10.30 A. M. in the forenoon or as soon thereafter as counsel may be heard, as to why an Order should not issue directing the Clerk of the United States District Court for the District of New Jersey to return the above entitled cause to this Court and as to why the Mandate heretofore filed with said Clerk should not be nullified.

It is further ordered that copies of the Petition filed herein, and this Order, which may be certified as true by the United States Attorney, be served upon the attorney for Harry Horowitz, the Relator-Appellant, not more than — days after the entry of this Order.

By the Court.

MARIS,
Judge, United States Circuit Court of Appeals for the Third Circuit.

105 In United States Circuit Court of Appeals

[Title omitted.]

Order dismissing rule to show cause

Filed Jan. 24, 1946

Upon motion of Edgar H. Rossbach, United States Attorney, by Grover C. Richman, Jr., Assistant United States Attorney, and Meyer Kreeger, of counsel with the relator, consenting thereto;

It is on this 24th day of January 1946 ordered that the rule to show cause heretofore entered on the 12th day of December 1945, be and the same is hereby dismissed without prejudice or costs to either party.

GOODRICH,
Judge, United States Circuit Court of Appeals for the Third Circuit.

We consent to the entry of the within order.

MEYER KREEGER,
Attorney for the Relator.

EDGAR H. ROSSBACH,
United States Attorney.

By GROVER C. RICHMAN, Jr.,
Assistant United States Attorney.

[File endorsement omitted.]

106 In United States Circuit Court of Appeals

[Title omitted.]

Order amending this court's judgment entered Nov. 15, 1945 and recalling mandate

Present: MARIS, GOODRICH, and O'CONNELL, Circuit Judges

It is hereby ordered that the mandate in the above entitled cause issued to the District Court of the United States for the District of New Jersey on December 3, 1945, be and the same is hereby recalled.

It is further ordered that the judgment of this court entered on November 15, 1945, be and the same is hereby amended to read as follows:

"This cause came on to be heard on the transcript of record from the District Court of the United States for the District of New Jersey, and was argued by counsel.

"On consideration whereof, it is now here ordered and adjudged by this Court that the judgment of the said District Court in this case be, and the same is hereby reversed, and the cause is remanded to that court with directions to discharge the relator's son, Martin Maury Horowitz, from military custody, without prejudice to further lawful proceedings under the Selective Service Act."

By the Court.

MARIS,
Circuit Judge.

FEBRUARY 6, 1946.

107 [Clerk's certificate to foregoing transcript omitted in printing.]

108 In the Supreme Court of the United States

Order extending time within which to file petition for certiorari

On consideration of the motion of the Solicitor General in the above-entitled cause, and good cause therefor having been shown, it is now hereby ordered that the time within which a petition for writs of certiorari may be filed herein be and the same is hereby extended for a period of 30 days from February 15, 1946.

Dated this 12th day of February 1946.

HAROLD H. BURTON,
Associate Justice of the Supreme Court of the United States.

U. S. GOVERNMENT PRINTING OFFICE: 1946

Supreme Court of the United States

Order allowing certiorari

Filed May 27, 1946

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Third Circuit is granted, and the case is transferred to the summary docket.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice JACKSON took no part in the consideration or decision of this application.